

The Hispanic Information and Telecommunications Network, Inc. (HITN)

Building #292, Suite #211
63 Flushing Avenue, Unit 281
Brooklyn, NY 11205-1078
Tel.: 212.966.5660

DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration

and the

DEPARTMENT OF AGRICULTURE
Rural Utilities Service

Comments Regarding

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Broadband Initiatives

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Contact: Joe Dolan
Office: 646-731-3635
E-mail: jdolan@hitn.org

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Executive Summary

The Hispanic Information and Telecommunications Network, Inc. (HITN) was established in 1983 as a private non-profit organization to create a network of non-commercial telecommunications facilities to advance the educational, social, cultural, and economic aspirations of Hispanics. Today, HITN-TV remains the first and only media conduit offering educational, enriching and empowering content to our nation's fastest growing ethnic group.

Much of the discussion centering on the stimulus funding made available through the American Recovery and Reinvestment Act of 2009 (ARRA) has centered on geographic regions that are unserved and underserved with certain levels of broadband access. However, we believe that “unserved areas” should be any area where broadband service is not generally available at affordable rates. The underserved broadband population is not limited to speed or geography. The “underserved” are also found in communities and/or regions where there are significantly low broadband adoption rates.

These populations may share ethnicity, disability, age, or socioeconomic barriers that limit or prohibit their access to broadband services. For example, Hispanics, Asians and other population groups are often limited by language, culture, and economic circumstances that transcend rural and urban settings, regardless of whether broadband services are available in their footprint.

We believe that the best approach to solving these unique broadband adoption concerns is to develop solutions that address some of these “underserved” sectors of our society on a national scale. We can provide a cost-effective method to rapidly serve homogeneous groups through programs that can scale to multiple regions.

In addition to the considerations in Section 6000(h) (2), we believe applicants should provide solutions to address vulnerable communities. Higher priority should be given to applicants – such as Community-Based Organizations (CBOs) – that expand computer capacity and foster useful and user friendly technology programs that serve the community with job creation, education, entrepreneurship and healthcare.

It is also vitally important that Puerto Rico and other American territories be afforded the same rights, opportunities and allocations as the 50 States and District of Columbia. We believe that NTIA should ensure that, like states, Puerto Rico and the other territories, receive at least one grant.

I. Purposes of the Grant Program

The ARRA is focused on creation and retention of jobs, as well as deployment of new infrastructure creation. We believe this can best be done by allowing applicants to address more than one purpose with a single application, provided they can do so effectively.

Blending multiple programs and making grant funds dependent on the independent decisions of multiple agencies is not a recipe for the best allocation of funds. Because Congress presumably created each program with a specific mission, the National Telecommunications and Information Administration (NTIA), the Rural Utilities Service (RUS) and other agencies should keep their programs separate. Any risk of “double dipping” can be minimized by post-competition, pre-award agency coordination.

Applicants have been encouraged to submit their best proposal. Both agencies should allow applicants to submit multi-community, multi-city or multi-state applications which can serve a community of interest or aggregate a collection of unserved or underserved users. Given the absence of clear reliable data as to levels of service in many areas, applicants should not be penalized if a discreet number of sites are somehow determined to be ineligible. An entire multi-community application should not be rendered ineligible because of the ineligibility of a few communities. Reviewers should not be focused on finding ways to eliminate applications but to be focused on finding ways to fund applications.

Both agencies should not administer their programs exclusively on a geographic basis. Statutory references to “area” are generally not modified and should be read to include areas of interest and areas of technology. For example, residents in a particular geographic area may be considered well served, yet there may exist an underprivileged community that is “underserved” because they do not have adequate or affordable access to bandwidth to meet their needs. The purposes referenced in sections 6001 (b) (3) through (5) are independent of any notion of “unserved” or “underserved” in sections 6001 (b) (1) and (2).

With regard to apportioning grant funds to specific categories, we believe that the minimum levels of stimulus dollars should be a floor, not a ceiling. There should be no further carving up of the funding opportunities into smaller pools. The five purposes should be considered as part of the scoring criteria against which applications will be judged.

II. The Role of the States

Congress outlined a significant role for the states in the NTIA’s Broadband Technologies Opportunity Program (BTOP). However, because applicants may propose projects that cover multiple states and jurisdictions, any role of the states should not preclude NTIA or RUS from funding multi-state, multi-community or multi-institution projects. Within a state or territory, the support of the relevant government should be

considered but not be determinative of the need for RUS or NTIA Broadband investment.

It is also vitally important that Puerto Rico and other American territories be afforded the same rights, opportunities and allocations as the 50 States and District of Columbia. We believe that NTIA should ensure that, like states, Puerto Rico and the other territories, receive at least one grant.

III. Eligible Grant Recipients

The statute clearly makes non-profit organizations eligible to participate in the BTOP program. We have no objection to private sector entities being permitted to participate in BTOP grant programs, so long as they advance the purposes of the program and do not reap extraordinary profits from their participation. At a minimum, partnerships between non-profit entities and for profit entities should be fully eligible for BTOP grants. Because non-profits are generally dedicated to public service and most grants are offered for a specific deliverable, it is extremely difficult for a non-profit to cross subsidize to fulfill a 20 percent matching requirement. NTIA should waive the 20 percent matching for non-profit organizations seeking to serve low-income or historically unserved and underserved users.

If for profit organizations are given an opportunity to apply for BTOP grants, the scoring design should not penalize non-profits by awarding extra points for extra matching. The ability of a for profit organization to raise matching funds is very different than that of a non-profit. At a minimum, if for profits are allowed to apply, non-profits should be deemed to be awarded the maximum points for matching.

IV. Establishing Selection Criteria

It is vital that a simplified application and selection process be created to ensure efficient selection of projects and distribution of the funding. A scoring process should be developed that factors in the ability of proposals to serve multiple areas or populations with a single grant or loan.

In addition to the considerations in Section 6000(h) (2), applicants should provide solutions to address vulnerable communities. These communities include those comprised of low-income residents, populations in which English is not the primary language, and where disability, age and/or cultural barriers present significant difficulties to access broadband.

Additionally, an applicant should be able to attest to the fact that the project itself is of a size or scale that would not be possible without the ARRA grant. Applicants should be required to demonstrate that the project can be sustained going forward for a period of at least two years once grant support has run out.

If leveraging or cost share is a scoring criteria for selecting projects, the NTIA should not penalize non-profits for their status and lesser ability to raise matching funds. Because non-profits are generally dedicated to public service and most grants are offered for a specific deliverable, it is extremely difficult for a non-profit to cross subsidize to fulfill a 20 percent matching requirement. The NTIA should waive the 20 percent matching for non-profit organizations seeking to serve low-income or historically unserved and underserved users. If for profit organizations are given an opportunity to apply for BTOP grants, the scoring design should not penalize non-profits by awarding extra points for extra matching which are easier for profit making entities to meet. At a minimum, if for profits are allowed to apply, non-profits should be deemed to be awarded the maximum points for matching.

It is entirely likely that either or both agencies could entertain high scoring applications which touch the same geographic territory. The selection criteria need not and should not adopt a “winner take all” approach to applications in the same geography. Applicants could be proposing very different services which are both needed. Both agencies should coordinate to prevent unintentional blocking of worthy applications.

The dividing line between “unserved” and “underserved” areas is a nebulous one. Even in well served areas there are pockets of “unserved” individuals due to price, availability, relevance or other barriers.

Non-profit entities should be considered a socially and economically disadvantaged small business as specified in Section 6001(h)(3) as defined under section 8(a) of the Small Business Act (15 U.S.C. 637).

V. Grant Mechanics

Both agencies should use a competitive grant process for distribution. Stimulus funds should not be awarded through block grants to States or other political subdivisions. All eligible entities should be allowed to compete for the grants and loans from both agencies.

Processing time has been the most significant shortcoming of existing broadband grant and loan programs. The ARRA seeks to create jobs quickly. Both agencies need to adopt a fundamentally new, streamlined approach to their ARRA grant and loan programs. The response to the ARRA broadband programs has been tremendous. Both agencies should anticipate an unprecedented number of applications. A simplified application process not only serves applicants but serves the agencies which will be unable to digest the pages of information required to make a complete application in current programs.

This streamlined application process would enable the agencies to quickly review by applications and allow for early decision-making on the application. The process then could require the applicant to provide more information on their project after conditional approval, but before a final decision. By utilizing a streamlined, pre-approval process,

both agencies could make faster determinations of the most feasible applications, while still allowing the agencies to obtain the full compliment of information necessary to make a final determination on the application.

VI. Grants for Expanding Public Computer Center Capacity

Higher priority should be given to applicants that expand computer capacity while ensuring community involvement. The applicant also should foster useful technology programs that serve the community with job creation, education, entrepreneurship and healthcare. In addition, the applicant should address the populations for which English is a second language and cultural barriers that exist in the communities they serve, as well as ensuring that broadband access is user friendly.

Community-Based Organizations (CBOs) have a strong tradition of providing vocational, health, and family preservation services to targeted groups, including the disabled, disadvantaged, and populations for which English is a second language. The neighborhood focus of CBOs enables them to relate to, understand, and thus be more responsive to the needs of specific populations. Today, there are thousands of local grassroots organizations and national institutions that work vigorously to provide needed services to underserved communities.

Given the current socioeconomic crisis in the U.S., it is likely that the demand for CBO involvement in providing workforce development and other vital services to these families will continue to increase. Many of these CBOs already offer computer literacy training and act as anchor points of access to low income communities. The expansion of their computer center capacity will facilitate broadband adoption efforts and create new programs to serve their constituents.

VII. Financial Contributions by Grant Applicants

Non-profits, particularly those seeking to serve economically challenged communities should not be required to provide matching funds.

Awarding extra points for matching funds above the 20 percent threshold gives an unfair advantage to for profit entities. If for profit organizations are given an opportunity to apply for BTOP grants, the scoring design should not penalize non-profits by awarding extra points for extra matching which are easier for profit making entities to meet. At a minimum, if for profits are allowed to apply, non-profits should be deemed to be awarded the maximum points for matching.

There may be cases in which applicants need more than 80 percent of a project's cost in grant funds. For example, a non-profit institution that serves specific needs of a community may have no other means to cross-subsidize the remaining 20 percent of a proposed project. In this case, it may be appropriate to fund more than 80 percent of the project's cost. Another option may be to offer the applicant a loan to be paid out with future revenues from a sustainable business model.

VIII. Coordination with USDA's Broadband Grant Program

The primary objective is to find the best possible solutions. If one applicant can effectively address more than one purpose, that applicant should be allowed to submit multiple proposals under one application. One application would facilitate better coordination between the various agencies to analyze proposals without having to cross reference multiple submissions. This also could prevent applicants from "double-dipping."

At a minimum applicants should be free to apply to either or both agencies. Prior to final awards both agencies can coordinate to avoid "double-dipping." Consolidated applications should not be eliminated because of a small number of sites that may be determined to be ineligible. Those sites should simply be dropped from the application.

IX. Definitions

For RUS, it is critically important that rural be defined in a way that does not deprive the rural areas of Puerto Rico from being fully eligible for RUS funding. The 2008 Farm Bill gave the Secretary of Agriculture broad discretion to designate any part of the island as a rural area outside the San Juan Census Designated Place. Because traditional definitions of rural do not capture the true rural nature of much of Puerto Rico, the Secretary should designate those areas outside of San Juan as rural and fully eligible to benefit from RUS broadband grants under the ARRA.

NTIA should establish a modern definition for what constitutes broadband service for the purpose of BTOP grants. NTIA should adopt a more progressive definition than that which has been used by the FCC in the past. The current FCC definitions are inadequate for contemporary broadband service.

An "unserved area" should be any area where broadband service is not generally available at affordable rates. Broadband in unserved areas should be defined as providing data rates of a minimum of 3 Mbps download and 768 kbps upload to the end user for mobile or nomadic wireless and a higher minimum data rate for wireline broadband service. The definitions of "unserved" and "underserved" with respect to residential consumer access should not exclude eligibility for BTOP applications seeking to serve public safety and other key community service entities.

The difference between "unserved" and "underserved" should be based on the availability of broadband service at rates proposed above. NTIA should define underserved as any area that does not have service available to a substantial majority of consumers at the minimum broadband speeds established for eligibility under this program. Thus, areas that do not have mobile broadband service at the speeds specified above would be considered "unserved" for the purposes of determining grant eligibility.

The NTIA should maintain some flexibility in these definitions and take into consideration unique circumstances of the area in which service is being proposed.

Grant applicants should make their case why NTIA should consider exceptions to this general rule and NTIA should consider reasonable requests for flexibility on a case-by-case basis.

The NTIA should consider mobile and fixed broadband services as distinct and not duplicative of each other for the purposes of establishing whether an area is “unserved” or “underserved,” as well as for the purposes of serving public safety, educational and health care entities that are identified in Section 6001 (3). It is important that the BTOP program distinguish between the different speed characteristics for mobile and fixed broadband services, especially with respect to determining eligibility of applications. Additionally, threshold speeds should be asymmetrical.

Minimum data rates should be measured as the speed to the end user that the applicant will provide. The applicant should make reasonable estimates on the capability of the network it will deploy with the BTOP grant funds to provide the threshold service to the end users in the service territory they propose. As take rates may affect broadband speeds available to the end user, the applicant should demonstrate in the application that its deployment plan will make the necessary adjustments to maintain the minimum speed pledged in the application. Advertised speeds or maximum speeds should not be considered in the definition of the threshold.

Shared facilities should be allowed, but no special consideration should be provided. With respect to network congestion, applications should account for how to address reasonably anticipated network congestions that are unique to the project that is proposed in the application.

No new regulatory requirements are necessary. NTIA should not impose any new requirements beyond existing statutory obligations. The FCC non-discrimination and network interconnection obligations are sufficient and the BTOP program should not attempt to create a separate, new set of regulatory obligations on service providers. Interconnection obligations under the BTOP program should not go any further than existing FCC regulations and statutory obligations. Any non-discrimination or interconnection requirements should be enforced by the FCC under its existing rules and NTIA should have no consideration of such requirements as part of BTOP grants.

The notion of served and unserved should not be tied to a specific area of geography but be also viewed as an area of interest, or technology.

X. Other Issues

The United States “underserved” broadband population is not limited to speed or geography. The “underserved” are found in communities and/or regions where there are significantly low broadband adoption rates. These individuals may share ethnicity, disability, age, or socioeconomic barriers that prohibit their access to broadband services. For example, the “visually impaired” community is dispersed throughout rural and urban areas, but has specific needs with regard to broadband access.

Similarly, Hispanics, Asians and other population groups are often limited by language, culture, and economic circumstances that transcend rural and urban settings, regardless of whether broadband services are available in their footprint.

We believe that the best approach to solving these unique broadband adoption concerns is to develop solutions that address some of these aforementioned “underserved” sectors of our society on a national scale. By doing so, we can provide a cost-effective method to rapidly serve homogeneous groups through programs that can scale to multiple regions.